City of Lafayette
City Council Special Meeting
Redevelopment Agency Special Meeting

MINUTES

Lafayette Community Center – Sequoia Room
500 St. Mary's Road, Lafayette, California

January 26, 2009
6:15 p.m.

1. CALL TO ORDER

Mayor Anderson called the meeting to order at 6:15 p.m.

2. ROLL CALL

Present: Council Members: Mayor Tatzin, Vice Mayor Andersson, Councilmembers Anderson, and Federighi

Absent: Councilmember Anduri

Staff: Steven Falk, City Manager; Ann Merideth, Community Development Director; Niroop Srivatsa, Planning & Building Services Manager; Tony Coe, Engineering Services Manager; Christine Sinnette, Senior Planner; Mala Subramanian, City Attorney

3. ADOPTION OF AGENDA

ACTION: It was M/S/C (Federighi/Anderson) to adopt the agenda. Vote: 4-0-1 (Ayes: Tatzin, Andersson, Federighi, Anderson; Noes: None; Absent: Anduri).

4. PUBLIC COMMENTS

Convene Redevelopment Agency

ACTION: It was M/S/C (Federighi/Anderson) to convene the Redevelopment Agency. Vote: 4-0-1 (Ayes: Tatzin, Andersson, Federighi, Anderson; Noes: None; Absent: Anduri).

5. CLOSED SESSION

A. Conference with Legal Counsel – Anticipated Litigation: Significant exposure to Litigation pursuant to Government Code section 54956.9(b) (1 Case)

Adjourn Redevelopment Agency

ACTION: It was M/S/C (Federighi/Anderson) to adjourn the Redevelopment Agency. Vote: 4-0-1 (Ayes: Tatzin, Andersson, Federighi, Anderson; Noes: None; Absent: Anduri).

B. Conference with Legal Counsel – Anticipated Litigation: Significant exposure to Litigation pursuant to Government Code section 54956.9(b) (1 Case)

C. Conference with Legal Counsel-Existing Litigation
Government Code section 54956.9(a)
Colby v. City of Lafayette et al.
Case No. N08-1508

B. Conference with Legal Counsel – Anticipated Litigation: Significant exposure to Litigation pursuant to Government Code section 54956.9(b) (1 Case)

6. ADJOURNMENT

ACTION: It was M/S/C (Anduri/Federighi) to adjourn to the Special City Council Meeting at 6:55 p.m. Vote: 4-0-1 (Ayes: Tatzin, Andersson, Federighi, Anderson; Noes: None; Absent: Anduri).

APPROVED:

_____
Don Tatzin, Mayor

ATTEST:

_____
Joanne Robbins, City Clerk

City of Lafayette
City Council Regular Meeting
Redevelopment Agency Special Meeting
Planning Commission Special Meeting

MINUTES

Lafayette Community Center – Manzanita Room
500 St. Mary's Road, Lafayette, California

January 26, 2009
7:00 p.m.

1. CALL TO ORDER

Mayor Tatzin called the meeting to order at 7:00 p.m.

2. ROLL CALL

Present: Council Members: Mayor Tatzin, Vice Mayor Andersson and Councilmembers Anderson and Federighi

Absent: Councilmember Anduri

Staff: Steven Falk, City Manager; Ann Merideth, Community Development Director; Niroop Srivatsa, Planning & Building Services Manager; Christine Sinnette, Senior Planner; Lt. Mike Hubbard, Police Services Manager; Leah Greenblat, Transportation Planner; Mala Subramanian, City Attorney; Joanne Robbins, City Clerk

3. PLEDGE OF ALLEGIANCE – Led with a Flag Ceremony Girl Scout Troop #31007 – Stanley School 7th Grade

4. ADOPTION OF AGENDA

Mayor Tatzin said there was a request to discuss Consent Calendar Item 11.I. and he asked to take it out of order on the Consent Calendar.

ACTION: It was M/S/C (Anderson/Federighi) to adopt the agenda, as amended. Vote: 4-0-1 (Ayes: Tatzin, Andersson, Federighi, Anderson; Noes: None; Absent: Anduri).

5. REPORT ON CLOSED SESSION

Mayor Tatzin reported no reportable action had been taken in Closed Session.

6. PUBLIC COMMENTS - None

7. PRESENTATIONS

A. Stanley-Springbrook Traffic Calming Project - Neighborhood Match by the Acalanes Valley and Ridge Neighborhood

Recommendation: 1) Thank the neighborhood and accept matching contribution for the Stanley-Springbrook Traffic Calming Project; 2) Allocate $70,000 of Traffic Calming Program fund reserves for the design and construction of the project; 3) Amend the 2009 CIP to include construction of the project.

Transportation Planner, Leah Greenblat, said in March 2008 the City Council approved the Stanley-Springbrook Traffic Calming project and established a neighborhood match requirement for the neighborhood of $30,000. The Council indicated that should the neighborhood meet the match amount, the Council would allocate $70,000 of the existing traffic calming program funds to complete the program, which was estimated at $100,000.

Over the summer, there were other projects which the City also received funding for which are already contained in the CIP; one for a sidewalk project from Camino Diablo East and another for the Warner Curve Road Alignment project. Staff has received notification from the neighborhood that they have reached their neighborhood match amount of $30,000 and want to present it. Staff seeks the Council's allocation of $70,000 for the design and construction of the project, and to amend the 2009 CIP to include the construction of the traffic calming project.

Councilmember Anderson questioned and confirmed with Ms. Greenblat that two other neighborhood groups under the traffic calming program have also been able to raise funds for improvements.

Public Comments:

LINDA ROTUNDO discussed their work to raise $30,000 and to build a neighborhood that has safety, wellness and a sense of community. She discussed instances of speeding, wreckless driving and a car accident, and said residents of Acalanes Valley and Ridge approved a ballot measure to make streets safer for all pedestrians. Residents began collecting donations, discussed their deadline, and on December 3, 2008 final donations were deposited to the City. She spoke about their neighborhood's various fundraising and solicitation to businesses, non-profits, in- and out-of-state relatives, discussed traffic calming design, sidewalk and curve project work, welcomed the City to follow their progress of their three-tiered approach by visiting their website at www.acalanesvalley.com, and thanked all contributors. She then presented Mayor Tatzin and the City Council with a check for $32,216.52.

Mayor Tatzin extended thanks to the neighborhood for their work in raising funds, hoped the project is successful and that it provides an example for other neighborhoods taking on similar projects. Vice Mayor Andersson suggested that Ms. Rotundo forward articles, pictures, and materials, and Ms. Rotundo reported that their website incorporated significant turnkey materials and pictures.

Ms. Greenblat noted that the neighborhood did not have an association prior to starting and now they have a website, and go on neighborhood walks. She also learned that because of not having sidewalks, residents do not allow trick or treaters or Christmas caroling along the streets, but in the upcoming year they will be able to do this.

ACTION: It was M/S (Anderson/Federighi) to: 1) Thank the neighborhood and accept matching contribution for the Stanley-Springbrook Traffic Calming Project; 2) Allocate $70,000 of Traffic Calming Program fund reserves for the design and construction of the project; and 3) Amend the 2009 CIP to include construction of the project. Vote: 4-0-1 (Anduri absent).

B. Lt. Mike Hubbard, Police Services Manager
Annual Police Report
Recommendation: Receive and file.

Police Services Manager, Lt. Hubbard, distributed revised statistical information on crimes, stating the City was still the lowest officer per capita at .6 per thousand residents and also the lowest in cost per residents in Contra Costa County for law enforcement services. Calls for service increased at almost 2,000 calls, police responded to 21,938 calls for service last year which is one officer attending to a call every half hour 24/7. Arrests have increased from 283 in 2007 to 358 in 2008, most of which were not directly related to DUI's or warrants but more for crimes against property.

Regarding crimes that had occurred, Lt. Hubbard said there were no homicides this year, there was one sexual assault/rape in 2008, domestic violence was reduced from 26 to 16 incidents in 2008, robberies increased significantly which mostly involved bank robberies, and he felt crime will increase especially given bad economic times. Commercial burglaries were down, but the monetary dollar amount of items taken was significantly higher. He noted AT&T was burglarized and had many cellular phones stolen, and over 13 AT&T stores have been burglarized causing over $600,000 just in cellular phones.

Thefts of residences stayed the same at 15 in 2008, but from 2007 to 2008 there was an increase in burglaries of homes. Police nabbed two burglary rings who were responsible for 13 burglaries in one month and spoke about similar items associated with thieves in Orinda. He referred to Danville's ongoing program, stating they have a multi-pronged approach—investigations are able to stop crime sprees from getting too far into crime. However, due to staffing levels in Lafayette, officers must leave areas to address other areas in the city which leaves neighborhoods vulnerable.

Theft from vehicles hassignificantly increased and Lt. Hubbard explained that thieves come into town and burglarize up to ten vehicles per night. He discussed risks associated with leaving articles in vehicles and leaving vehicles unlocked, noted that stolen vehicles had increased in 2008 and narcotics sales, possession and arrests for narcotics have stayed the same. DUI's have increased slightly, traffic citations are down but they do not show that a traffic officer responsible for solely writing citations has been out on injury.

What is not reflected is information taken during the Moraga Road closure for 2.5 months, and he noted that EBMUD paid for extra patrol for the Burton Valley area and others negatively impacted from the construction and detour, wherein over 200 citations were written during that time by various officers and not included in statistics. He noted there was a significant increase in traffic citations due to the hiring of a new employee.

Lt. Hubbard next presented traffic accidents, stating these were being coded out as service to citizens and not capturing the numbers of accidents and police are hoping to qualify for traffic safety grant funding in the future. Lastly, Lt. Hubbard presented a 16-year history of trends from 1992 to present. He discussed investigation work by the Police Services Officer (PSO) of over 100 crime scenes, and noted that the Sheriff's Department has assigned employees based on the Lafayette model for investigative and crime scene work, which has been a huge success for them.

There were no public comments, and the Council thanked Lt. Hubbard for his presentation, as well as officers for their continued commitment and service.

8. OLD BUSINESS

Convene Joint City Council and Planning Commission Meeting

ACTION: It was M/S/C (Anderson/Andersson) to convene as a joint City Council/Planning Commission. Vote: 4-0-1 (Ayes: Tatzin, Andersson, Federighi, Anderson; Noes: None; Absent: Anduri).

9. STAFF REPORTS

A. Niroop Srivatsa, Planning & Building Services Manager
Planning Division Work Plan for 2009
Recommendation: Approve the work plan for 2009.

Mayor Tatzin welcomed Planning Commissioners and newly appointed Commissioner Maggio.

Ms. Srivatsa said review of the Division's Work Plan began in February 2002 and staff has been busy in the economic and housing boom. 2008 was busy in terms of the numbers of applications received; staff processed 247 development applications, most of which were hillside development permits and design review applications.

Regarding the long range planning, considerable progress was made on the Downtown Strategy. The draft was released over the weekend and staff made progress on the inclusionary housing ordinance, the Eastern Deerhill Road study, received numbers from HCD and ABAG and participated in Projections 2009.

The Planning Commission and DRC over the last year continued serving on a number of advisory committees, including the Downtown Advisory Committee, the Senior Housing Task Force, the Library Technical Committee, the Environmental Strategy Task Force and the House Size Committee.

Ms. Srivatsa referred to the budget and said approximately 80% of the Planning Division expenses allocated to the General Fund are covered by developer fees, about 50% of revenues received come directly from application fees, and this has held true over the last 6-7 years. She pointed out; however, that in November and December 2008 Planning Division revenues associated with development application has been reduced significantly.

Typically, the City collects $40,000 to $50,000 per month and only $12,000 was collected for both months. Given the economy, staff does not anticipate processing as many applications as it did last year. Another reason is that staff is constantly trying to streamline the development review process. The Applications Review Committee (ARC), who meet twice a month to review a triage of applications, have been extremely helpful in ensuring there is a correct amount of City review, as not all applications go up to the Planning Commission or DRC.

Ms. Srivatsa said the Task List for 2009 is almost identical to the one approved in 2008. Most of the tasks have been initiated but not yet completed, and she believed this was the year for the completion of those projects. Staff hopes to complete all listed in the work plan and in addition, milestones have been prepared for each of the tasks and staff is reviewing them internally and thereafter will make them available on the website page, as desired by the Council.

The Task List for 2009 includes completion of the Downtown Strategy, Housing Element, Inclusionary Housing Ordinance, the House Size Committee regulating the size of houses in neighborhoods, and the Eastern Deerhill Road General Plan Amendment. There are a number of other projects, totaling 21 in all.

When the Planning Commission reviewed the Task List last week, it recommended approval of the list as well as suggested adding one additional, minor task which is a Minor Amendment to the Tree Ordinance to allow in-lieu fees to be used for planting of trees and native plantings in the public right-of-way and on public property. Staff will initiate this text amendment if the Council approves the list. An additional task that may have to be absorbed by the Division is conducting the environmental analysis for the Parks Master Plan, which is almost complete.

Councilmember Anderson said at the last meeting there was concern about the City's finances. He questioned the City's plan to match expenditures to revenues and maintaining this and questioned if staff was working on such a plan. Ms. Srivatsa said in addition to the current planning tasks in the division, staff also completes long-range planning tasks. Also, planning staff mans the counter every afternoon of the week, takes public calls on public and planning issues, and if you add all of the hours up dedicated to long-range and work for the public good, it translates to about 55% of the Planning budget associated with the General Fund. She noted there were tasks that staff undertakes which are covered through the Redevelopment Agency which does not take into account those expenditures. Therefore, 55% of the work staff does is work for the public good.

Ms. Srivatsa said in the work plan there is a task to investigate the creation of additional development impact fees. One year ago, Siefel Consulting was hired to update the Walkways and Drainage Impact fees, and she suggested staff look at a number of new impact fees, some of which would cover the cost of preparation of the Housing Element or General Plan, and this is one task staff would like to undertake this year.

Mayor Tatzin questioned to what extent long-range planning items could be identified, such that this is really the infrastructure by which a planning function works, and just as we charge the time to process an application, a portion should be charged for the necessity of putting that infrastructure in place, and add this to a staff overhead rate. Ms. Srivatsa agreed this was something the consultant was looking at and she said some cities have a General Plan Implementation Fee and adopt it once a nexus study is completed.

Mayor Tatzin questioned to what extent could those be allocated to one or more specific areas. As an example, the Eastern Deerhill Road General Plan Amendment could be used and when those properties come in for development, there would be a fee that would be associated with those properties.

Ms. Srivatsa said in looking ahead, there are also some tasks that are as a result of the Strategy and Housing Element, which will create additional implementation programs staff must undertake in the following year.

Councilmember Federighi said she did not see two items on the list which had been discussed in the past; 1) design review guidelines for the downtown; and 2) updating the sign ordinance as it relates to the downtown, and she asked for comment on these. Ms. Srivatsa said these have been deferred to pending completion of the Downtown Strategy and they would be more likely tasks for 2010.

Vice Mayor Andersson noted that if there is a trend for lower numbers of development applications, his impression was that there are long-term projects which have not had as much attention, and a lull. He questioned if the lull would provide an opportunity to catch up and move things ahead while staff determines that a reduction in development applications is a long term

trend or a brief anomaly. Ms. Srivatsa said it gives staff some breathing room to complete tasks that have languished for a couple of years.

Councilmember Anderson said the implementation of the Downtown Strategic Plan would be considered a redevelopment project, and he questioned if time would be calculated against that. Ms. Srivatsa said no, it would not, and she said the implementation of some of the Housing Element programs that go toward the provision of affordable housing have been charged to redevelopment, but the Housing Element update itself is part of the General Plan budget.

Mayor Tatzin questioned and confirmed that the Planning Commission believed it those tasks listed were achievable for 2009. He encouraged the Planning Commission and staff to review the list periodically and possibly defer some items into the next year and have some things completed rather than getting 20% completion on many items.

Public Comments:

GUY ATWOOD asked the Council to address with staff is prioritizing projects such that if the Council decides monies need to be cut, that those items get done and others wait. He said there is a situation where there is 80% coverage to a fairly huge deficit of hundreds of thousands of dollars, which is a big hit to the budget and all departments may need to cut back given today's situation.

ACTION: It was M/S/C (Andersson/Federighi) to approve the Work Plan for 2009 with additional instruction to return periodically for adjustment. Vote: 4-0-1 (Ayes: Tatzin, Andersson, Federighi, Anderson; Noes: None; Absent: Anduri).

Adjourn the joint City Council and Planning Commission

ACTION: It was M/S/C (Anderson/Andersson) to adjourn the joint City Council and Planning Commission. Vote: 4-0-1 (Ayes: Tatzin, Andersson, Federighi, Anderson; Noes: None; Absent: Anduri).

10. PUBLIC HEARINGS

A. Christine Sinnette, Senior Planner

Appeal by Richard Holt of the Planning Commission denial of HDP47-07 and V17-08 for a request for a hillside development permit (HDP47-07) and variances (V17-08) to build a new two-story single family residence on a lot located at the intersection of Sierra Vista Way and Sessions Road (Tract 5332 Lot 66). APN 2332-052-019

Recommendation: Adopt Resolution 2009-05 upholding the appeal by applicant of the Planning Commissions' denial of HDP47-07 and V17-08 and approving HDP47-07 and V17-08 subject to findings and conditions contained in the resolution.

Senior Planner Christine Sinnette gave the staff report, stating the project is a siting and massing determination for a 2,639 square foot single family home in the hillside overlay district, and a request to reduce the yard setback from a trail easement from 15 to 5 feet. The Council has held two public hearings on the item, and at the last meeting, directed the applicant to address several comments and revise the project.

The first item requested was to reduce the mass and overall height of the building. Although the overall height has not been reduced, the massing to the front of the house has been. In the

previous plan, the living room and office cantilevered out over the garage by about 4 feet. It now sets back 8 feet from the face of the garage.

The second request was to reduce the building's gross square footage to be more consistent with that of the Sierra Vista neighborhood and it has been reduced from 2,800 to 2,639 square feet, or 259 square feet. The overall square footage has been reduced by 868 square feet from the original proposal.

Ms. Sinnette said another request was to move the building farther up the slope to the north. The building was moved from the 463 contour interval to the 464 contour interval, which results in an additional setback of 4 feet further up the slope. The offset now between the rear of the Swartz' home and corner of the proposed garage is 25 feet.

The final request was to minimize impacts to the trees east of the building. The applicant did not respond directly to this request; however, there were two arborists reports submitted which provided information on the 28 trees on the eastern side of the property. There are about 3 trees within 3-5 feet of the eastern wall of the house that would be impacted by construction or a proposed drainage swale or pipeline, one tree is a multi-trunk coastal Redwood in poor condition and the two other trees are Canary Island Pine also in poor condition. As part of the arborist report, there are recommendations for preservation and removal of certain trees based upon their chance of survival. There is a tree preservation program included in the reports which includes excavation and inspection of the root crown regions, installation of protective fencing, and air spade trenching. To ensure impacts to trees are mitigated to the maximum extent practicable, a condition of approval would require the applicant to submit a revised arborist report as well as a tree preservation plan for the Phase II application, if submitted.

Ms. Sinnette said Lot 66 is a legal lot and the property owner has a right to develop the property for an economically viable use. A single family residence is allowed in the R10 zoning district. Based upon review by the Fire District, City staff and consultants, there are no problems or concerns that would preclude a safe access to the property as currently proposed. It is staff's opinion that the issue of privacy between the subject property and the Swartz's house has also been addressed to the maximum extent feasible. The rear of the Swartz's house is 25 feet from the corner of the proposed garage, and additionally, the windows on the eastern elevation are placed at least 6 feet above the existing grade and would not provide a direct line of site into the Swartz's home but would provide proper light and ventilation. The proposed house is set back 15 feet from the eastern property line where only 10 feet is required by the zoning ordinance. The building has been reduced in size, it is more compatible with properties in the immediate Sierra Vista neighborhood, the site is flanked by two, existing two-story homes. Visual and privacy impacts not already mitigated by the current plan can be further addressed by careful attention to architectural details, consideration of building materials and colors, and vegetative screening during the Phase II application, and these conditions have been added to the project.

Ms. Sinnette said after the staff report was prepared, she received correspondence from the Fire Protection District, who had provided comments on two other occasions and two other site plans. They were sent a set of current plans and submitted four comments back. She said one comment related to fire sprinklers which is a standard response from the Fire District and she has added it as a condition of approval. Another comment related to the fire hydrant which has already been added as a condition, and there were two other standard conditions regarding addressing and clearance of vegetation which would be deferred to the Phase II application, which would also be reviewed in detail by the Fire District.

Ms. Sinnette said the City Council needs to make a series of findings to approve the project, and as outlined in the staff report and resolution, it is staff's opinion that findings can be made. Staff's recommendation is to adopt the resolution which would uphold the appeal by Lamorinda Properties of the Planning Commission's denial and approving HDP47-07 and V17-08, subject to conditions and findings in the resolution.

Councilmember Anderson referred to trees and confirmed with staff that there was no arborist report that reflected the plan currently before the Council. He said the report cited in the staff's document has a comment in terms of replacement trees. He questioned if this was being required as mitigation for the loss of trees or simply the arborist's sense of the value of the trees being lost. Ms. Sinnette said not specifically, because it has not been determined how many trees would be impacted in Phase I. There is a condition that the Phase II project comply with Chapter 6-17; the Tree Protection Ordinance, and a requirement that the Phase II plan include an arborist's report and in compliance with 6-17, it will require replacement of one 15-gallon tree per each six inches of trees removed from the property, of any species.

Councilmember Anderson said the plan reflects the replacement of 80 trees, and Ms. Sinnette said there would be 9 trees impacted and the number of replacements would fall between 80-100.

Councilmember Anderson reviewed the plan and he counts another 7 trees that should be assessed because the drain lines are going very close or through them. He did not understand where the 100 trees would be mitigated, particularly if they are recommended to be oak trees which get quite large. He voiced concern that the City may be creating a situation where it cannot mitigate the impact at the site. Ms. Sinnette said this is not uncommon; a similar application required the replacement of 170 trees and they would propose either 15-gallon or larger trees. There is an offset for a 24-gallon tree which would count as 2, 15-gallon trees, and any proposal for tree replacement is based on an arborist report as well as the City's landscape consultant. If trees cannot be planted on site, the applicant must pay an in-lieu fee for each tree at about $260 per tree. There is no allowance or exemption at this time; therefore, they either plant trees on site or pay for them and the money gets deposited into a mitigation fund.

Councilmember Anderson referred to the finding that the development will have to preserve open space, physical features, including outcroppings, other geological features, stream beds, drainage swales, native vegetation, native riparian vegetation, animal habitats and other natural features. Staff's response on the last sentence indicates: "The open, western slope will remain undeveloped except for the possible planting of native oak trees to mitigate the removal of the non-indigenous trees and vegetation in the development area. No vegetation indigenous to Lafayette will be removed." He voiced concern in the change of the wording, as native is in the mitigation and "indigenous" is in the staff response, and asked what was considered "native."

Ms. Sinnette said in Chapter 6-17, Lafayette's definition of a native tree is "any species found in an oak woodland, chaparral, grassland or riparian habitat." She said the wording was suggested by the City's landscape consultant, but to be more accurate, staff could change it to read, "no trees native to an oak woodland habitat are being removed," and "no vegetation indigenous to an oak woodland habitat" would be removed. The Redwood, Canary Island Pines, and the Pepper trees are not native to an oak woodland environment.

Vice Mayor Andersson said the trees on the eastern edge of the building site have been removed when the building was closer to the boundary. Ms. Sinnette said fewer trees are now being removed and impacted by the current plan. He questioned how far the eastern wall was moved

away from the lot line. Ms. Sinnette said it had previously been set at 10 feet back and is now 15 feet back.

Mayor Tatzin said the proposal is another modified proposal in response to the Council's request, and he asked what the average size of the house in the Sierra Vista neighborhood and what was the range of house sizes. Ms. Sinnette said for houses within 300 feet on Sierra Vista, they range from 1900 to 4000 square feet with an average of 2400.

Mayor Tatzin questioned what liability the City had if it approves a project on a lot for which title insurance cannot subsequently be obtained. City Attorney Subramanian said the approval of any project is per the City's zoning and land use requirement. Whether it can actually be developed due to other restrictions separate from the City's requirements would be a separate matter, and she did not believe the City had any liability issues; however, this is not to say the City would not be sued.

The public hearing was opened, and Mayor Tatzin explained public speaking protocols.

DAVID BOWIE, representing Lamorinda Properties and Richard Holt, said in response to the introductory comments by staff, he suggested title insurance can be obtained and is an underwriting decision made by the title insurance company and has nothing to do with the City's determinations. He said regarding trees and tree plantings, he asked everyone to remember the context in which the application is being presented, which is this is phase I of a two-phase application and granting of a variance. There is a lot of work to be done with the application, it will be reviewed by the DRC, include a detailed landscape plan, and all will work together to address the tree issue to find out precisely how many trees will be impacted and identify precisely what mitigation is required. He said they are not asking for anything special in terms of treatment. They opposed, however, any special barriers placed in their way and as a practical matter, the fine-tuning of the project is precisely the role of the DRC. He said at least one DRC members is an experienced architect as well, and the issue is not really before the Council.

Regarding this project, Mr. Bowie said they are asking for nothing more than siting and massing. There is no other place to put the home give or take a couple of feet, which was the same conclusion reached by the Planning Commission and the same conclusion staff reached. He said they have moved the project another contour interval to the north by another 4 feet, which provides a distance of 25 feet between the Swartz's. They were also asked to change the massing to minimize bulk and the pushed the second story back 8 feet over the garage. They were also asked to reduce the size of the project, but in his opinion there is no rational basis for reducing it, but they wanted to be respectful of the Council's concerns and reduced it another 259 square feet, which is almost 10%. The home is well within the range of sizes of homes found elsewhere in the immediate area, the home has only one admitted potential impact on anyone, the staff report lays out mitigating factors incorporated into the design to ensure there is no impact on the Swartz's property at all. The Council would go way beyond its boundaries by requiring more privacy, separation, and there is no rational reason to impose further conditions. He felt the staff report was very complete, findings are all supported by factual evidence and urged the Council to approve the project in terms of siting and massing and then send it to the DRC for fine-tuning.

Mr. Holt declined to add to Mr. Bowie's comments.

Councilmember Anderson said he is quite aware the project is in phase I and in the process, a lot of time has been spent developing detailed plans and getting arborist reports to give the Council

and Planning Commission information as to what will occur with trees in the area. He voiced concern with the trees because the findings discuss maintaining vegetation, and we may be getting too far in cutting down trees. If these were not critical and can be addressed in Phase II, if the Council does not understand what the impact will be by asking questions and by requiring the applicant to do more to save trees, how would the Council be assured that in Phase II there was that control.

Mr. Bowie said the simple answer is that one does not submit an application unless there are approved plans tied to a specific drawing, which will be reviewed and approved by the DRC. All the Council should be dealing with is massing and siting, and nothing can be built with these. They have gone well beyond anything he has ever experienced at this stage and it is not typical to get as much detail in the arborist report, as well. All findings are phrased, "to the extent feasible" and there is a reason for a permit process, mitigation and replacement, because often, one cannot locate a permanent structure where it will most likely have an impact on trees. This is why the Planning Commission can work on things that assures there are protections are afforded by the project. In addition, Redwood trees are not regarded as native, they are fast-growing trees which can be easily replaced, and they propose re-siting another 5 feet away to create more room to both protect existing trees and in addition, to add further trees for additional screening. Therefore, everything the Council has asked for has been done, everything they need to do has been done, there is no permit issued, the DRC has a right to add conditions to its approval and at that point, there will be a landscape architect on board to provide the plan, the City's landscape consultant who will do a peer report, which will be made part of the conditions. He felt everyone was getting ahead of themselves by trying to address all of the issues at this point.

Mayor Tatzin questioned what considerations went into the decision to reduce this proposed project by 259 feet from the one seen in December. Mr. Bowie said in lopping off square footage, by the time you push things architecturally around, sometimes square footage cannot be reduced because of other impacts. But, their architect is present.

Dick Holt, owner, said the square footage came primarily by reducing and moving back the level over the garage, but they also had to move a stairway around. He reflected what the Council had said about size which was to reduce it. By pushing it up the hill and reducing the mass, this caused a reduction in square footage.

Public Comments:

ALAN HOLBERG gave his time to another speaker.

NED ROBINSON said he does not live in the neighborhood involved or represent a group of clients, said he was introduced to the project by Ambassador Sessions when the road had not been constructed, he had purchased the lot, and complained he had been told he could not build on the lot. The road was built and his house then constructed. When Petar Jakovina came in with his construction, he and Norm Tuttle were appointed as a committee to work with Petar Jakovina who wanted to build on the lot and move the road over, and was told he could not do this due to easements. Then, someone found out the lot was unbuildable in the eyes of the County. He checked with the Assessor who indicated it was unbuildable because it was "plastered" with easements. He checked with County Counsel's office which was their advice. The problem is how one justifies putting some development on an existing easement. He spoke about his home near the easement and he would be upset if a neighbor wanted to build something on the easement, and he did not believe the law allows it. He said all uphill owners need the easement for access, and regarding if any permit was ever allowed over an easement, and with investigation by Carol

Hehmeyer, none represented the same situation. Having served 14 years on the Council, it never happened, as well as his experience with 50 real estate and land use attorney, it has never happened and it would be wrong to do so. He agreed the City does not enforce easements but believes the City recognizes them, and he believes the appeal should be denied.

Councilmember Federighi referred to building on easements, and the question is whether there is a lot to lot easement that covers the entire property, which is the disputed issue that the Council cannot address. Mr. Robinson believed this should be resolved by a court prior to the City getting involved, said he has seen the deeds which say there is an easement over the entire lot for pedestrian, vehicle and utility purposes, which is broad, but he did not know how the City could grant a permit to build on an easement which is owned by 20 people uphill.

LYNN HIDEN said the January 21st edition of the Lamorinda Weekly carried a letter to the Editor about the issue surrounding this project as submitted by Ned Robinson and she read the letter into the record, which reiterated Mr. Robinson's position and the special privileges Dick Holt wants.

LAKSHMAN WATAWALA presented the recorded deed of his house which he said clearly meets all boundaries of the lot, noting the width and coordinates are defined all the way up to the top end of the lot, and he read into the record the description of the easement. He said the deed was given to him from the builder who purchased the lot from Petar Jakovina, and all owners in the area are party to the easement.

CAROL HEHMEYER, Attorney and former resident of Sessions Road, said she has filed at least four letters since the last hearing, said Lot 66 is clearly listed on the Contra Costa County website as an unbuildable lot and she left copies of the website with the City Clerk. She said the lot is unbuildable because it is covered lot line to lot line by about 8 different recorded easements for ingress, easement, and utilities. 22 households at least own each of these easements. No one can build on Lot 66 unless the applicant can show clear title to build, and clear title does not need to be shown by other property owners. The City Attorney has consistently said the City does not enforce easements and no City in the State of California does this because it would be against the law. At the last hearing the City Attorney appeared to be advising the Council to consider a variance request from the lot line to lot line easement over all of lot 66 in an abundance of caution so that the Holt house could be built on the lot even if a court does decide that the entire lot is covered by an easement. The City planner working on the matter filed a document called, "variance request from the access easements-applications from 2000 to 2008" which supports the fact that Lafayette has granted variances to permit construction inside and upon deeded, recorded easements in the past. Not one of the five cited cases stand for that proposition, and she has a full letter describing each on file. However, one of the cases proves that our ascertain opposition this structure is accurate. One on a list of applications was withdrawn because it did involve a proposed construction of part of a cabana on a neighbor's access easement. The easement was on the applicant's land just as in this case. It was a deeded, recorded easement, the access road did not occupy all or much of the easement, so there was room for cars to get by even if the cabana was constructed on the easement. She said the City Planner correctly made the following statement, "The City of Lafayette cannot issue a permit for development to an applicant who does not have the authority to build on a particular piece of land." She said she believes the City Attorney has withdrawn her argument that you can grant a variance to permit a building inside the lot line to lot line easement, but she cannot determine this, but variances, which are regulated by State law, can only be granted from natural topography on the land. They cannot be granted through self-induced hardships, such as conditions that result from a land owner's actions, like easements created by prior land owners. Where deeded easements exist,

this City has always respected them and no structure has ever been permitted to be built inside a recorded easement. Most of the cases cited that were cited involved setbacks from easements and not building on easements, which cannot be done. Mr. Holt has a right to use the lot as long as he does not reasonably interfere with its use. However, the surface of the lot must be left free for installation, construction, maintenance and relocation of utilities, which includes telephone, water, sanitary waste, electrical and others. The redwood trees also have deep roots and were planted as a requirement from a previous development up hill. The trees are planted in a drainage swale and the reason there are reports that indicate the area is fine is due to the redwoods. The lot must also be left free from maintenance and repair of an access road including construction, repair and improvement of road, retaining walls, to protect drainage systems, further addition of fill to stabilize the road on the right side, and any other project such as the turn around area that may be needed at the bottom of the hill. Many deeds of citizens living up on Sessions Road and in Northridge have been filed in this action. The deeds are crystal clear and she read from one deed, and she noted that all deeds are slightly different in their language. Ms. Hehmeyer said the City has always respected easements, the party wishing to build must go to court and not the landowners who own the easements and the proper thing to do is to clear title.

Councilmember Federighi asked Ms. Subramanian to respond to the position that the burden is upon the applicant to clear title before an approval can be made. Ms. Subramanian said Ms. Sinnette has pointed out that the example on the Dewardi's application, the City never told the Dewardi's that they needed to clear title. Regarding whether it should be the burden of the applicant to prove title, she said in this case, they have given multiple letters in their attempt to clear title, and similarly the neighborhood and attorneys representing the neighborhood have also given numerous letters explaining that the easement would conflict with what the applicant has sited. There is a situation where the City is put between the two parties, and she indicated again that the City should not take an action or get involved in deciding the other part is correct. Because of the complicated nature, she felt it will depend on a court to actually prove title in this case. The applicant has done what it can to prove title, but it has been contradicted by other comments, letters and documents from the neighborhood.

Mayor Tatzin said he read a letter from Ms. VanGelmer to David Clayton in 2004, and while it doesn't say you need clear title, it does say, "The City of Lafayette cannot issue a permit for development to an applicant who does not have the authority to build on a particular piece of land." This sounds synonymous to having title to such land and he asked for an explanation of the difference. Ms. Subramanian said the difference between that situation and the one before the Council is that there was a clear easement that neither party disagreed with. Whether the person would grant permission to allow the cabana in the easement was the issue. In this case, one party indicates there is or is not an easement, and one party saying there is clearly an easement.

Mayor Tatzin questioned how the city determines who can grant authority to build on the land to be consistent with the letter. To him, the operating clause of the letter is that the City is not going to act until the applicant can prove they have the authority to build on the particular piece of land. In this case, both agreed the applicant did not have the authority, but the applicant in this case believes he has the authority and the neighbors do not. Ms. Subramanian encouraged the Council not to get involved in whether there is authority, and should the Council choose to move forward on the application, the City Council should not make a determination on the easement and takes no position on the easement, and defines it as a disputed easement in which both parties have different opinions on whether the easement exists and the nature of the easement.

Councilmember Anderson felt the City would be in the best position to simply request that the title be cleared prior to making an action on the application because anything else does not seem consistent with past practices, and he questioned why this was not a good move for the City to take. Ms. Subramanian said this is something the Council can take into consideration and do; however, the City could subject itself to liability and potentially a lawsuit from the applicant.

Vice Mayor Andersson felt this could be viewed in two ways; Assume there is a valid dispute as to whether there is an easement across the entire property. We could proceed on the assumption there is not an easement and approve whatever is approvable and wait to see if the City is proven wrong. The other approach would be to proceed on the assumption that there is an easement across the entire property and approve or not approve what is approvable and wait to be proven wrong or right on that. He said he was not sure he saw the argument for why one should proceed in one way rather than another. Ms. Subramanian noted a third option is taking action on the item and not making a determination on the easement, and allowing the courts or parties involved to make that final determination. Staff recommends avoiding a situation where the Council is getting involved in what legal counsel believes is a private matter and private easement between the parties.

KEN SARGENT said the question posed to the City Attorney was why move forward, he suggested the course will get to public policy. From a public policy standpoint, where there is that kind of reasonable difference on each side, the Council should ask itself whether to move ahead. He suggested there are good public policy reasons, not only because the neighborhood unanimously are opposed to this, the project is controversial and requires variances in order to slot a house which is larger than the site and neighborhood can take, and he suggested not forgetting where the project began. The Planning Commission indicated it should be moved much farther up and much smaller than it is. He asked the Council not to forget this, as they spent a lot of time and energy on the project and then said no; they would not allow such a structure to be built and do not force the citizens the Council represents to defend themselves in court. Instead, the Council should indicate that if the applicant is determined to build a house, get the legal matter cleared up.

SUE PATCHFORD gave her time to Jeff Harmon.

CARLA FROLICH said she lives directly across the street from lot 66, said their home was build in 1964 of 1,258 square feet and what is proposed would be a tower looking into their backyard which is nothing like homes in the neighborhood. Old redwood trees, whether they are native to the area or not, were planted 50 years ago and if ripped up, peers will need to be built and the house will end up in their dining room. She said the home is not typical of Lafayette, none of us have moved here to live in homes built near property lines and without established trees. For anyone to say the square footage is typical of size is not true, and asked the Council to think about their perspective.

JON SPIELER said the word ambiguity was used from the various positions we have, and in reading language in the deed, it is totally unambiguous and clear as a bell. The easement goes from lot line to lot line on lot 66.

WING CHAN said the people of Northridge Park still are opposed to the project.

DIANE SPIELER said she wanted to contrast the meetings they have attended about this project with a project talked about two meetings ago where neighbors came and spoke in favor of the project. In this case, they have fought the project for over two years and it has been so difficult.

F. GOSPODAROWICZ protested the way City staff behaves, did not believe they can prove there is a 4,000 square foot structure on Sierra Vista within the noted distance, said he wrote a letter saying the City was in favor of the project which he felt was disgraceful, and none of his questions were answered.

JEFF SWARTZ referred to the square footage issue, and he said Ms. Ramordi lives to the west of Lot 66 on 1.5 acres and her home is about 2,600 square feet, his home is about 1,800 square feet, there is a project with a bedroom addition is about 1,300 and he was not sure where Ms. Sinnette was getting the square footage.

Mayor Tatzin said the house at 1111 Sessions is about 4,000 which is a couple of buildings, and Mr. Swartz said the horse stables and cottage in the back is probably added and it is on 1.5 acres. Mr. Swartz believed there was a way out of this; however, as the original application shows nothing about a trail easement but simply shows a 50 foot road, and this is how Mr. Holt got it past the first hurdle and tried to circumvent the issue. If staff saw how the current deed affected the property, it would never have gotten this far. He also said he lives to the east, his house is quiet and private, it will be impacted, he spent a lot of money and time remodeling it, his property value will drop dramatically due to lack of privacy, and he suggested with the $60,000 Mr. Holt saved on the property, he should move Sessions Road into Brown Avenue and put it in the middle of Lot 66, which he would not object to.

JEFF HARMON said there are so many miscommunications with the issue, he said the applicant has been completely non-responsive to the neighbor's concerns and Council's directions, said the Council clearly stated it is a Sierra Vista home and not a transition to Sessions, and siting and massing was to be smaller, which was completely ignored. The house is still much larger than most homes on normal lots. It is the defiance that the Planning Commission also experienced and he feels everyone has been bullied in this process. There is also a lot of discussion around the variance issue, said he also went through the many variance files and there was nothing to do with access easements except one which involved a precedent setting the other way. He said not particular to the case is: "The City of Lafayette cannot issue a permit for the development to an applicant who does not have the authority to build on a particular piece of land." He believed the former planner, Greg Wolff, was correct in his determination also, said there are so many issues that the Planning Commission could not find and have not been properly mitigated, and some of the representations about the Fire Department are not true as well as they stand by their letter of August 22, 2008 which states specifically that there should be no access from Sessions Road; it should be a Sierra Vista entryway. There is only one way to get out of the area if there were ever a brush fire or emergency and it is a bottleneck already. He said all findings must be made, noted that the applicant started being out of compliance with ten of them, are only in compliance with five or six, and all they want to do is get to Phase II, but siting is the issue. He asked the Council to make the applicant go to court, make the court prove the easement is over the entire lot, and he questioned why the City would make an exception now not to make them prove it.

Guy Atwood said he was the Chairman of the Planning Commission when the Northridge Subdivision was approved, he worked on the application for more than two years, they were very concerned about the roadway, about where it was placed, a number of items that affected people who lived at the bottom of the road, drainage, traffic safety, soils stability, preservation of trees, reducing noise levels from cars gunning up and squeaking brakes going down the hill, views, privacy and security, access to people's properties and driveways, fire safety, trails, and preserving riparian habitat. The Commission said it wanted to move the road over, which would be where the applicant is making his application now. It was stated by moving the road over,

other homes would be impacted over others, and they believed they could preserve some of the trees and mitigate other issues. Now, however, the applicant is trying to build a home on the area. He also thinks someone would be liable to those who were told they could not put a road where they wanted to put it because of the removal of trees. The trees address privacy, security, drainage and many other items, but now the trees are proposed to be cut down. He also pointed out that the Commission requested a scenic easement be placed on the entire property as part of the application process and approval. He questioned where it was and said the City is liable if this has not been done, as clearly it impacts all owners in the area. The Commission would not have approved the application without the scenic easement. They certainly did not want to create another lot, which he felt was illogical. And by moving the road over did not intend to create a lot. When the Northridge subdivision was approved, the matter was reviewed for two years and he cannot understand why the matter was even being discussed, questioned where the conditions of approval were located for the subdivision and an audience member noted they were missing, and he recommended denying the application.

Vice Mayor Andersson confirmed with Mr. Atwood that there was a condition of approval that required a scenic easement on the entire parcel. Mayor Tatzin noted that he was not sure any of the current staff were in place at the time, and unless there is evidence of the record; however, Mr. Atwood can confirm that there is a scenic easement.

Vice Mayor Andersson referred to the discussion to move the road and the decision to keep it where it currently is. He questioned and confirmed with Mr. Atwood that he believed this implied that there was an easement over the entire lot so the road could be moved anywhere on the lot.

RAJI WATAWALA expressed her strong opposition to the project, voiced concern with traffic safety as developing the lot will make driving up and down the steep hill extremely dangerous. She has come across situations where she needed to pass large vehicles and she must drive on non-paved areas and on the stated lot to avoid collisions. She also said this is a sharp curve on a steep hill turning into Sessions Road. Trucks avoid getting stuck on the curve by taking a wider curve on Lot 66. When a truck gets stuck which often happens, the only exit from the area gets blocked for hours, and building a home will worsen the already dangerous situation. She noted the City was putting all residents of Sessions and Northridge Roads in danger by approving the project.

Rebuttal – Applicant

DAVID BOWIE, Applicant, suggested the City Council act objectively and fairly with respect to the application because in contrast to the belief by neighbors, there is no question that staff has handled the application in a completely objective fashion. There has been no favoritism toward Mr. Holt or toward him with respect to the manner which staff has proceeded, thinks the Council has been even-handed in terms of hearing presentations. Regarding comments by neighbors, regarding the scenic easement, if one is imposed it is imposed over the property where there is an action pending a subdivision. He said the lot was not created as part of the Northridge subdivision and there would be no right to impose a scenic easement over the lot. The lot was created by an old map in the 1960's and the Northridge subdivision had nothing to do with it. There was an easement right to go through this particular lot and in fact, Sessions Road was created to provide that access. No one has ever said they would build a home in the middle of Sessions Road, but to suggest that this somehow should be a scenic easement and part of Northridge subdivision is purely made up for the convenience of the presentation. It has also been suggested there have been problems with drainage swales, trees, potential soils problems, and experts have testified that the lot has been found completely capable of being developed.

There has been review by the traffic engineer for safety of ingress and egress, and there is no professional opinion that a problem exists. Fundamentally, there is probably only one issue which is siting, but there is no real debate about it. The Planning Commission, while turning down the project, found that the only essential site is the area it has been placed. There is also no rational basis that the home should be smaller, as there is no privacy impact to the Swartz property, and it should be noted that Mr. Swartz is the landlord of the home and any impacts are not on him personally. They have also set the home far apart and away from the Swartz residence and also included mitigation to ensure maintenance of privacy. Regarding its size, there are similar two story homes in the area and there is no reason to cut back on square footage. In summary, the Assessor's Office comments have nothing to do with any final conclusion and the fact is that there is no lot to lot easement that would preclude development of the property. He noted the neighbors have a right to file suit as well as Mr. Holt, and the City is obligated to process an application which has been deemed complete and act on it according to its regulations and not decide which party is right or wrong. He said Mr. Martin has testified that you cannot, even from an engineering standpoint, widen Sessions Road or move it to the east because doing it would shorten the distance between two points and make the road more steep. He believed Mr. Holt has the right to use his property in any fashion as long as it does not reasonably interfere with the use of the easement. The easement itself historically was defined and the title company determined its location. He discussed a case in mediation and he turned up several cases where the court indicated there can be a broad expressed grant of easement defined and there is a right to encroach into it if in fact that is an overburdening of the other land. He said they are suggesting exactly what the City Attorney has suggested which is that it is inappropriate for the City Council to sit as a court of law and adjudicate the rights of private owners, who have recourse available to them. The City is required to process a complete application which has been submitted, deemed complete in accordance with city regulations, and make a decision on it. He said they are committed to seeing the application through, and if the neighbors wish, neighbors can file a lawsuit, and asked the Council to approve their application and move to Phase II.

Councilmember Federighi said neighbors have asked to require the applicant to quiet title. At one point, Mr. Bowie testified that Mr. Holt did not wish to sue his neighbors, but in essence, there is an invitation for him to do this. She said a lot of research has been said to be done on the matter and are confident they would prevail. She asked then if Mr. Bowie would therefore be willing to quiet title. Mr. Bowie said litigation is always to be avoided if possible, and he did not see how the City can decline to process an application deemed to be complete when there is nothing in regulations or ordinances that would suggest that under these circumstances, they are not interfering with anyone's travel up and down the hillside when the road has existed where it has been for 25 years. There is no basis or ability to move the road and no reason they should be compelled to quiet title. He suggested the City might look to adopt an ordinance that requires them to do that, but one does not exist currently.

DICK HOLT, owner, said he has no desire to sue anybody, said this has been a long and wearing fight on his and his wife's behalf and he is absolutely convinced he has the legal right to develop the property and he intends to do so.

The public hearing was closed.

Councilmember Anderson said it seemed the City Attorney offered a different type of position, which would be to ask that this return as a clear title application and questioned the strategy for this process to move forward. Ms. Subramanian said should the Council decide to move forward with the application, this could be added as a condition of approval prior to moving forward to

Phase II to be contained in Exhibit A; to require clear title or title insurance to the property as it relates to the disputed easement to confirm title.

Councilmember Anderson voiced concern that the Council was being put in a difficult position, said many believe there is an easement across the entire parcel as well as the applicant who says there is not, and suggested finding a way to add a condition that would require some level of clarity to the issue. Adjudication was mentioned which he felt would be the best, and he believed the issue should be forced and cleared up. He was also concerned with the impact to existing trees and often we try to maintain the environment in place and try not to remove trees and replace them. Regardless of whether it is Phase II action, he wanted to better understand what the mitigation would result in before the City actually commits to the project.

Councilmember Federighi said if title insurance were obtained on the property, she questioned what would actually be insured. Ms. Subramanian said the title company would be ensuring what exists on the property. To the extent there is an entire easement over the lot or a partial easement, they would be insuring what actually exists and encumbered on the property. She noted this was not the same level of security as if the court makes a determination, which would be the most definitive.

Councilmember Federighi said obtaining a quiet title action would be somewhat involved due to the number of easements and varying language. She questioned and confirmed obtaining title insurance might also be difficult because it is clear there is a dispute and there are numerous documents involved.

Vice Mayor Andersson agreed the matter was difficult, thinks that the easement issue should be resolved before getting to Phase II issues and noted it has also been suggested that Council should not be making a legal decision. The easements as they read do not include the terminology, "lot line to lot line" but reference a map, he is swayed in favor of the lot line to lot line easement in the sense that if one looks at supporting indications, in a non-binding opinion from the Assessor's Office on it being unbuildable, why would they say that if they did not view the lot line to lot line easement. The fact that the lot is still not built on and the sales price very low suggests there was a cloud over it. At the same time, if it turns out there is a lot line to lot line easement, there are legal arguments to be made that it could still be built on. All that being said, there is no clear path as to a decision; however, what has been suggested is that the matter go to court to get cleared up. He thinks the idea of requiring a condition that clear title be shown or proven is the only path he could support.

Mayor Tatzin thanked everyone for attending the meeting, encouraged people to attend Saturday's Downtown Strategy and Specific Plan meeting at 9:30 a.m. at Room 240, which will chart the future of the City for the next 50 years for the downtown. He said there was a comment by a speaker that the Council is not a court which is correct; however, the Supreme Court faces cases where people think will result in a momentous decision regarding how they interpret the Constitution and they find a very narrow way to interpret the case before them and actually make no determination about the Constitution. He thinks there is a way to do this and he finds himself there this evening. On December 8th after public testimony, he commented that he felt that the house proposed at 2,800 square feet was too large for the lot by a substantial amount. The house was 15-20% larger on the lot which was clearly constrained with a road in the middle of it, compared to other lots on Sierra Vista. He felt that if anything, the house should be on the smaller side of the homes on Sierra Vista. The house is still not smaller and he is prepared to vote to uphold the Planning Commission and deny the application.

Mayor Tatzin said also to recognize that if the Council approves the project, a subsequent owner could come in and request a second unit, which must be approved by right. Then, the property would be approaching 4,000 square feet. Therefore, the Council needs to look at all of its approvals with that law in mind and he could not see that for this parcel.

Councilmember Federighi said she was not prepared to deny the application on those grounds. The 2,600 square feet does seem to be in line with many of the homes in Sierra Vista. She agreed the Planning Commission was concerned with the actual square footage with what was a small buildable portion of the lot which was under 4,000 square feet. She said Mayor Tatzin was being true to what he earlier stated which she thought was an "easy out". Mayor Tatzin said he believed it was the right decision. Councilmember Federighi said she was more interested in how to address the easement issue, and agreed the Council could not determine if there was a lot line to lot line or partial easement, but to her, this was the essential issue.

Councilmember Anderson asked Mayor Tatzin what the basis for his recommendation for denial is. Mayor Tatzin said there were several; the house is 31 feet in height on a small property, there are floors on three levels including the garage, a variance is requested and thereby encroaching more than we like on the trail easement and the paved portion of the road, the massing encroaches on trees, which there is concern should be saved. By having a mas that would be smaller than the typical house on Sierra Vista which we have been told is 2400, if a house is reduced down to 2000-2200 you could conceivably deal with some of those things. He felt it would be best to simply deny and ask that a new application be submitted.

Councilmember Anderson questioned if the denial would be without prejudice, and Mayor Tatzin said it would be in the sense but this would allow Mr. Holt to bring back substantially the same application which he did not feel was beneficial. He believed the applicant could still return with an application within a year, but there would be a new application fee regardless.

Mayor Tatzin said if the Council chose not to go in this direction, he suggested that some condition be added regarding obtaining clear title or title insurance, or something that ensures that this is a developable lot before proceeding to Phase II.

Vice Mayor Andersson said he was not sure the Council could approve it to further re-use what is before the Council. In looking at Phase II with the preservation of trees and other requirements, he suspected it might get reduced in size further. Mayor Tatzin said his experience has shown that projects tend not to get smaller later on, and they often then become an entitlement.

Mayor Tatzin made a motion; Councilmember Anderson seconded, to direct staff to return with a resolution of denial for the appeal by applicant of the Planning Commissions' denial of HDP47-07 and V17-08 on the basis that the project is too large for the buildable site and that necessitates a variance and creates potential damage to existing vegetation.

BREAK
Mayor Tatzin called for a brief break, and thereafter reconvened the regular meeting.

ACTION: It was M/S/C (Tatzin/Anderson) to direct staff to return with a resolution of denial for the appeal by applicant of the Planning Commissions' denial of HDP47-07 and V17-08 on the basis that the project is too large for the buildable site and that necessitates a variance and creates potential damage to existing vegetation. Vote: 3-1-1 (Ayes: Tatzin, Andersson, Anderson; Noes: Federighi; Absent: Anduri).

11. CONSENT CALENDAR

Items requested for removal were Items A, B, D, I and M.

ACTION: It was M/S/C (Anderson/Andersson) to adopt remaining Consent Calendar Items C, E, F, G, H, J, K and L. Vote: 4-0-1 (Ayes: Tatzin, Andersson, Federighi, Anderson; Noes: None; Absent: Anduri).

C. **Ann Merideth, Community Development Director**
Ordinance 578 repealing Chapter 6-26, Public Art, and adding Chapter 11-7, Public Art, and Resolution 2008-44 setting a public art fee and maintenance endowment requirement
Recommendation: Waive second reading of Ordinance 578 and adopt

E. **Agreement for Installation and Maintenance of Existing and New Landscaping between Steve and Mary Buster and the City of Lafayette, located at 3822 Palo Alto Drive APN 244-023-020**
Recommendation: Accept agreement for Installation and Maintenance of Existing and New Landscaping and authorize the City Clerk to record.

F. **Resolution 2009-06 Supporting Local Match for Caltrans' Bicycle Transportation Account Grant Application**
Recommendation: Adopt Resolution 2009-06.

G. **Letter to the East Bay Regional Park District regarding Lafayette-Moraga Trails concerns**
Recommendation: Authorize the mayor to sign and send the letter to the East Bay Regional Park District.

H. **Letter of support for the County Library's application for an IMLS National Leadership planning grant for the Lafayette Library and Learning Center**
Recommendation: Direct staff to prepare letter for the Mayor's signature.

J. **Investment Report as of December 31, 2008**
Recommendation: Receive and file.

K. **Resolution 2009-07 Appointing Standby Officers to the Lafayette City Council**
Recommendation: Adopt Resolution 2009-06.

L. **Review and Certification of the Lafayette's Measure C Checklist for Calendar Year 2006 and 2007 for Submittal to the Contra Costa Transportation Authority**

Recommendation: 1) Review the completed Checklist. 2) Find that Lafayette's policies and programs, as reported in the Checklist, conform to the requirements of the CCTA's Growth Management Program and authorize staff to forward the Checklist to the CCTA.

Items Removed for Discussion:

B. **Traci Reilly, Co-Chair Crime Prevention Commission**
Ordinance 579 repealing Chapter 56-4 of the Contra Costa County Code Entitled "Solicitors and Peddler" and adding Chapter 4-4 of the Lafayette Municipal Code Entitled "Solicitors, Peddlers and Canvassers"

Recommendation: Waive second reading of Ordinance 579 and adopt.

Councilmember Federighi referred to Section 2, Item 11.b, Section 4-405, she did not believe punctuation was correct in a way to clear up ambiguity the Council had regarding felonies and asked that the following be proposed such that it includes all felonies, deleting the word or. Vice Mayor Andersson asked that the word, of also be added, as follows: "The Police Department shall verify the accuracy of information set forth in the application and shall deny the permit if the application contains false information; if the applicant has ever been convicted of any felony; ~~or~~ any misdemeanor involving theft, violence, drugs, crimes of a sexual nature or acts of a trespassing nature; or if the entity on whose behalf the applicant will be peddling..."

Ms. Subramanian clarified that the language appears in multiple sections and it would be globally changed.

ACTION: It was M/S/C (Andersson/Federighi) to waive second reading of Ordinance 579 and adopt as amended. Vote: 3-0-1-1 (Ayes: Tatzin, Federighi, Anderson; Noes: None; Abstain: Andersson; Absent: Anduri).

I. **DR38-08 Richard Burnside (applicant), Lafayette Improvement Association (owner) MRO Zoning: Request for issuance of a certificate of appropriateness pursuant to section 6-2131, Lafayette Municipal Code to replace an exterior door at the Lafayette Town Hall, a designated City Landmark, located at 3535 School Street; APN 234-042-010**
Recommendation: Adopt Resolution 2009-04 to issue a certificate of appropriateness.

MARY MCCOSKER said she was seeking an adjustment in fees for the placement of a new front door for the Town Hall. She is on the Board of the Lafayette Improvement Association which owns the building, are currently renting the building to the Town Hall Theatre Group who has asked them to replace the existing front door as it is warped enough not to fit tightly preventing the alarm pads from engaging. After some research on metal doors, a proposal was forwarded for commission grade doors with panes of tempered glass and commercial grade panic bars. The proposal was sent to the Historic Society who asked to preserve the historical look of the building, requested new doors resemble as closely as possible the original style. LIA agreed to the proposal for the metal doors which meet Fire Code and it was sent to the City for approval. At the last meeting, she learned that LIA paid a $700 permit fee for installing the new $5,000 door, and all organizations are non-profit entities and fundraising has been daunting. She requested the fee for the project either be waived or lowered.

Mayor Tatzin questioned what necessitated the door being a design review application. Ms. Sinnette said it is required by ordinance. Any exterior change to a commercial or multi-family zoned property requires design review and it can be done at certain levels as defined in the zoning ordinance. She noted that the ordinance would actually require the project to be elevated to the DRC at a $3,800 fee but staff believed it was such a minor scope and only charged $700 for review by the Zoning Administrator. Secondly, the property is a City landmark and requires a Certificate of Appropriateness by the City Council and there is no application fee for the COA.

Mayor Tatzin said if someone broke a glass door at the Safeway Store and needed to replace it, he questioned if they would have to go DRC. Ms. Sinnette said if they were changing it from plain glass to stained glass, this would be an exterior change and would require DRC approval. Ms. Srivatsa also noted staff has spent time on both the design review application and Certificate of Appropriateness.

Mayor Tatzin agreed staff followed the guidelines of the ordinance, wondered whether the City has gone in some cases too far and whether a provision is needed for those discretionary, minor projects where there is no real change. Councilmember Anderson noted while minor, this would affect City revenues which had been reviewed and revised. Mayor Tatzin then briefly discussed the issue regarding the amount of time given certain types of projects.

Vice Mayor Andersson questioned if there was a way fees could be waived or reduced. Ms. Srivatsa said staff can bring information back regarding lower or discounted fees for non-profits, but she noted that if a land use application was received from a non-profit, this would also be discounted.

Mayor Tatzin suggested when setting goals for the upcoming year, that Council provide a grant to the Lafayette Improvement Association in recognition of their support to the City over the last 50 years. Councilmember Federighi noted she believed there was a fund for community support, and City Manager Falk noted the Council has the power to unilaterally waive or discount the fee for this instance and no policies need be changed.

ACTION: It was M/S/C (Anderson/Andersson) to adopt Resolution 2009-04 to issue a certificate of appropriateness, and waive the $700 permit fee for DR38-08 Richard Burnside (applicant), Lafayette Improvement Association (owner) MRO Zoning, to replace an exterior door at the Lafayette Town Hall, a designated City Landmark, located at 3535 School Street; APN 234-042-010 based upon the application being a significant, historic structure in Lafayette that helps define the character of the town. Vote: 4-0-1 (Ayes: Tatzin, Andersson, Federighi, Anderson; Noes: None; Absent: Anduri).

C. City Council Minutes
January 12, 2009
Recommendation: Approve.

Vice Mayor Andersson noted he was not present, but clarified on the top of page 2, first paragraph, as well as on page 4, first and last paragraphs, it should be changed from "Councilmember Andersson" to "Councilmember Anderson".

ACTION: It was M/S/C (Anderson/Federighi) to approve the minutes of January 12, 2009, as amended. Vote: 3-0-1-1 (Ayes: Tatzin, Federighi, Anderson; Noes: None; Abstain: Andersson; Absent: Anduri).

D. Resolution 2009-02 approving a use fee rate of $17,018.46 for Lafayette Little League's use of Buckeye Fields for the 2009 season.
Recommendation: Adopt Resolution 2009-02.

Mayor Tatzin said he would like to understand what the basis is for the 54% from expenses that the City allocates to Little League, and asked that the item be continued to the next meeting. He said on the detail sheet it breaks out the percentages for a variety of things and there is no reason why it is 54%, versus 50% versus 75%. City Manager Falk said it may have something to do with the number of weeks or hours they occupy the fields, but Jennifer Russell would most likely have to address this.

ACTION: It was M/S/C (Anderson/Andersson) to continue Item D to the next meeting. Vote: 4-0-1 (Ayes: Tatzin, Andersson, Federighi, Anderson; Noes: None; Absent: Anduri).

Convene Redevelopment Agency

ACTION: It was M/S/C (Anderson/Federighi) to convene the Redevelopment Agency. Vote: 4-0-1 (Ayes: Tatzin, Andersson, Federighi, Anderson; Noes: None; Absent: Anduri).

M. Resolution R2009-02 Approval of amendment of Critical Solutions, Inc., consultant for project advisor/management of Lafayette Library and Learning Center. Recommendation: Adopt Resolution R2009-02 to make the findings that obtaining new proposals for construction management services on the Lafayette Library and Learning Center Project would be impractical and to amend Critical Solutions, Inc.'s professional services agreement for the Project.

Agencymember Federighi questioned the $914,200 and where it comes from. She questioned if the assumption was that this amount was in addition to the $501,000 amount. Executive Director Falk said Critical Solutions was serving as a consultant on a not to exceed $500,000 contract. Due to the recent issues relating to the Library, the Agency is requesting additional time and Mr. Coe would like to increase the not to exceed budget from $500,000 to $914,200. Councilmember Anderson believed they were currently at $683,000. Ms. Merideth suggested continuing the item and Mr. Coe could address the question.

ACTION: It was M/S/C (Anderson/Andersson) to continue Item M. Vote: 4-0-1 (Ayes: Tatzin, Andersson, Federighi, Anderson; Noes: None; Absent: Anduri).

Adjourn Redevelopment Agency

ACTION: It was M/S/C (Anderson/Federighi) to adjourn the Redevelopment Agency. Vote: 4-0-1 (Ayes: Tatzin, Andersson, Federighi, Anderson; Noes: None; Absent: Anduri).

12. COUNCIL/COMMISSION REPORTS

A. Councilmember report on activities and consideration of matters a councilmember wishes to initiate for placement on a future agenda.

Councilmember Federighi said she unfortunately could not attend the Saturday Downtown Strategy workshop.

Vice Mayor Andersson reported attending a meeting in Orinda regarding the new youth center they have planned, and he said there is a very active and enthusiastic group of youth and parents who have a site, permission from the owner to improve it, estimates of cost, and are planning to raise funds. He noted some Lafayette Youth Commissioners are also getting involved, as well, and as the City contributed to the Skate Park, this is considered a Lamorinda group and there most likely will be a request for donation. Mayor Tatzin noted that money raised for the Skate Park came from the Youth Commission and he hoped for their participation. Councilmember Federighi reiterated her concern at the time that funds were scarce, the center might be difficult for Lafayette youth to access except it is located by BART, and the idea of contributions and fundraising is a good idea.

Councilmember Anderson reported meeting with the House Size Committee last Wednesday along with the Lafayette Homeowners Council. They had an opportunity to present concepts for the ordinance to representatives, which was well received.

City Manager Falk reported that he and Councilmembers Federighi and Anduri met with the Parks and Recreation Director and Parks, Trails and Recreation Commissioner Bellenger and Allison Hill to discuss open space and how the acquisition of open space dovetails with Measure WW, specifically whether there are candidate parcels in town for purchase. He said the group will be recommending at the goals setting session to add an open space component and the Council will have the opportunity to discuss the matter. Councilmember Anderson noted he was the new liaison and could not be present.

Councilmember Federighi noted the meeting she did attend while liaison was that there was consensus among Commissioners that Measure WW probably could not be used for open space acquisition, and Councilmember Anderson said they absolutely could.

Vice Mayor Andersson reported that he, Jennifer Russell, Geoffrey Bellenger, and Ivor Samson met regarding a dog park parcel on Olympic Boulevard and Pleasant Hill Road. They have been working with the Park District on trying to get an MOU to operate the parcel if it passed from the County, and they believe it is being close to being worked out. Councilmembers further discussed operating costs.

13. WRITTEN COMMUNICATIONS

A. Letter dated January 5, 2009 from Jay Lifson, C.E. O. Lafayette Chamber of Commerce, requesting permission for street closures as outlined in their letter for the 14th Annual Art & Wine Festival from 6pm Friday, September 18th until 10pm Sunday, September 20th, banners on the median light poles, publicity in Vistas and the Community Center newsletter and assistance from Lafayette police and public works departments.
Recommendation: Discuss and direct staff.

B. Letter dated January 5, 2009 from Jay Lifson, C.E.O. Lafayette Chamber of Commerce, requesting permission for street closures as outlined in their letter for the 2009 Lafayette Reservoir Run from 6am to 10:30am Sunday, October 25th, banners on the median light poles, publicity in Vistas and the Community Center newsletter and assistance from Lafayette police and public works departments.
Recommendation: Discuss and direct staff.

Mayor Tatzin said he had asked for continuance from the prior meeting because he wanted to understand how much the City spends to support the two events, which he understood is $47,000 last year. Secondly, he wanted to talk with some of the library representatives whether they wanted to have banners at the same time that there are banners proposed for the Reservoir Run, assuming that the Library opens on Oct. 17th. Regarding the second item, they would like to have banners, and he suggested taking no action because at this point, there are many caveats about whether or not Oct. 17th will be the opening date. The banners are made and a decision can be made much closer to the date.

In terms of City support, being the only person here when the Core Area Assessment District made money, the City never froze its share and therefore it was hard to return to property owners later and ask them to pay more. He asked to approve the City budget for the two events at $47,000 and leave this as the budget for this and future years, and if costs exceed this, then the City would bill the Chamber of Commerce the difference.

Councilmember Federighi confirmed that Mayor Tatzin was therefore requesting a freeze in the City's contribution.

Public Comment:

Jay Lifson, Chamber of Commerce, thanked the Council and reminded the Council that it never forgets its relationship with the City. Understanding the budget is being reviewed, he sent emails out to individuals and onto the Council, stating a number of people wrote indicating how important the events were to the community, and believed Mayor Tatzin's recommendation was reasonable.

ACTION: It was M/S/C (Anderson/Andersson) to grant permission for street closure as outlined for the 14th Annual Art & Wine Festival from 6pm Friday, September 18th until 10pm Sunday, September 20th, banners on the median light poles, publicity in Vistas and the Community Center newsletter and assistance from Lafayette police and public works departments not to exceed $47,000 for both the 14th Annual Art & Wine Festival and the 2009 Reservoir Run. Vote: 4-0-1 (Ayes: Tatzin, Andersson, Federighi, Anderson; Noes: None; Absent: Anduri).

ACTION: It was M/S/C (Anderson/Andersson) to grant permission for the street closure as outlined for the 2009 Reservoir Run from 6am to 10:30am Sunday, October 25th, possible banners on the light poles, publicity in Vistas and the Community Center newsletter and assistance from Lafayette police and public works not to exceed $47,000 for both the Reservoir Run and the 14th Annual Art & Wine Festival. Vote: 4-0-1 (Ayes: Tatzin, Andersson, Federighi, Anderson; Noes: None; Absent: Anduri).

C. **Letter dated January 8, 2009 from Jay Lifson, C.E.O. Lafayette Chamber of Commerce, requesting permission to use Lafayette Plaza on Tuesday, May 19 for the 6th Annual Taste of Lafayette from 4pm to 10pm and assistance from Lafayette police and public works departments.**
Recommendation: Discuss and direct staff.

ACTION: It was M/S/C (Andersson/Federighi) to grant permission to use Lafayette Plaza on Tuesday, May 19 for the 6th Annual Taste of Lafayette from 4pm to 10pm and assistance from Lafayette police and public works departments. Vote: 4-0-1 (Ayes: Tatzin, Andersson, Federighi, Anderson; Noes: None; Absent: Anduri).

14. ADJOURNMENT

The City Council adjourned at 10:55 p.m. to the next regular City Council Meeting at 7:00 p.m. on February 9, 2009

APPROVED:

_____
Don Tatzin, Mayor

ATTEST:

_____
Joanne Robbins, City Clerk